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Part IV: Processors

WAC 173-900-400 Processor Performance Standards for Environmentally Sound Management

All processors used by CEP Recycling Plans must meet the performance standards for environmentally sound management found in this section.

Processor Compliance Letter.

- (1) Each primary processor used by a CEP Recycling Plan must provide the authority or the authorized party a compliance letter. This letter must be signed by the owner or operator of the facility and will:
 - a. Certify that the processor is aware of all the requirements in this chapter and will comply with the processor performance standards as well as any other applicable requirements; and
 - b. Ensure that all other processors used by the primary processor meet the standards in this chapter.

Compliance with other laws and rules.

Processors used by a CEP Recycling Plan must comply with all applicable federal, state, and local requirements pertaining to the transport, processing and management of electronic products and their components, recycled materials and residual wastes. When a processor is located out of the United States the processor must be in compliance with all applicable laws and rules in the county where the processor is located.

Processing Residual.

To qualify as a processor, for use by a CEP Recycling Plan, the amount of residual waste a processor can dispose of is:

1. No more than five percent of the total covered electronic products, by weight per year.
2. No more than ten percent of the total covered electronic products, by weight per load.
3. If there is no end-use markets for the recovered material Ecology may approve, on a case-by-case basis, a larger residual percentage than those listed in (1) and (2). End-use markets may charge a fee and still be considered viable. E.g. A smelter that charges a tipping fee to cover inherent costs while still recovering valuable materials.

NOTE: Reference to existing WAC 173-350-310(2)(b)(ii) (ii) Accept only source separated recyclable materials and dispose of an incidental and accidental residual not to exceed five percent of the total waste received, by weight per year, or ten percent by weight per load;

Disposal of Processing Residuals.

Processors must dispose of residual waste in a manner compliant with all state, federal and local laws, rules, and ordinances. Where the disposal of residual waste occurs outside of the United States the processor must comply with all applicable laws in the country where the residual waste is disposed.

Operating Standards.

- (1) **Operation:** Processors must operate and maintain the facility to prevent threats to human health or the environment.
- (2) **Environmental controls:** The processor must have controls in place at the facility to ensure that no contamination from the processing is released to air, land or water in the vicinity of the facility. Controls must include, but are not limited to, proper ventilation, drainage, etc.....and take into consideration:
 - a. ambient air standards,
 - b. dust;
 - c. water quality; and
 - d. accidental spills and potential releases.
- (3) **Building structures:** Processing facilities must be located in a permanent structure that adheres to local building codes. Processors must conduct all processing inside a building.
- (4) **Dust controls:** Processing facilities must provide dust controls in a manner that assures that dust generated is not released into the outdoor environment.
- (5) **Storage:** Processors must only store CEPs for up to 180 days. Ecology may grant an extension under certain circumstances. For example, if accumulation of certain quantities will facilitate proper recycling, including when it would be more cost effective to transport a full load.

Required Documentation.

Processors must, at a minimum, have the following documents on-site and available for inspection:

- (1) **Licenses and permits:** All licenses and permits required by all appropriate governing authorities that hold jurisdiction.
- (2) **Environmental Risk Management Plan:** An environmental risk management plan or documentation describing how the facility is in compliance with all applicable laws and regulations.
- (3) **Emergency Management and Safety Plan:** An emergency management and safety plan that will be used in case of an accidental release of hazardous material into the workplace or the outside environment that will minimize risk to human health or the environment.
- (4) **A Hazardous Materials Identification and Management Plan:** A hazardous materials identification and management plan that specifically addresses at least the following: lead, mercury, beryllium, cadmium, batteries, phosphor compounds, PCBs, and brominated flame retardants and other halogenated materials, with particular focus on possible generation of by-product dioxins and furans, what is necessary to prevent human health or environmental risk, and how the processor will notify secondary processors about these materials.
- (5) **Exceptional Pollutant Release plan:** A plan for reporting and responding to exceptional pollutant releases, including emergencies such as accidents, spills, fires, and explosions.
- (6) **Liability Insurance:** Liability insurance policy that meets the “Financial Assurance and Liability” performance standard in this section.
- (7) **Receiving and shipping records:** Receiving and shipping records that document chain of custody for the CEPs including information about intent to recycle and/or reuse the CEPs.
 - a. The county of origin within Washington state from which the covered electronic products were collected, by weight, brand and type.
 - b. The shipping destination of processed materials by facility and geographic location.
 - c. Shipping manifests, bill of lading and scale receipts that document quantities of cover electronic products received and materials shipped.
 - d. Records documenting reuse of CEPs or salvaged material.
- (8) **Facility Closure Plan:** A facility closure and post-closure plan that includes the financing mechanisms that will be used to assure all costs are covered.
- (9) **Facility Security Plan:** A facility security plan that includes procedures that are employed to assure electronic data destruction.
- (10) **Certification of compliance:** Qualifications and certifications of compliance by the primary processor as well as any processors that the primary processor may ship their products to for further processing.
- (11) **Training records:** Proof of training of staff to meet the training performance standard in this chapter.
- (12) **Facility Audits:** Copies of facility audits conducted on behalf of the authority or authorized party as required in WAC 173-900-??? Processor Audits.

Note: Ecology is working on draft language for the auditing section of this chapter

Financial Assurance and Liability

- (1) **Financial Assurance and Liability.** In the event of bankruptcy, corporate dissolution, or abandonment of a facility, or unwillingness to pay, the owner or operator of a processing facility must demonstrate financial responsibility and meet liability requirements for:
 - (a) pollutant releases and cleanup;
 - (b) accidents and other emergencies that cause harm to human health and/or the environment; and
 - (c) bodily injury and/or property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility.
- (2) **Requirements.** Financial responsibility and liability requirements terms and conditions include:
 - (a) **Liability Coverage.** Insurance companies providing liability coverage must have a current rating of financial strength of:
 - (i) AAA, AA, AA-, A, A as rated by Standard and Poor's;
 - (ii) Aaa, Aa1, Aa2, Aa3, A1, A2 as rated by Moody's; or
 - (iii) A, A, A, A-, B, B as rated by A.M. Best;
 - A. Ecology may file claims against liability insurance when contamination occurs as a result of releases or discharges from electronic products of the processor facilities subject to regulation under this section;
 - B. Facility owners/operators requesting the use of the financial test and corporate guarantee must meet a minimum tangible net worth criterion of <twenty million dollars? – taken from WAC 173-303>.
 - (b) **Bodily Injury and Property Damage.** An owner or operator of a processing facility must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities.
 - (c) **Request for Variance.** If the owner or operator can demonstrate to the satisfaction of Ecology that the levels of financial responsibility required by (2)(a) or (2)(b) of this subsection are not consistent with the degree and duration of risk associated with processing at the facility or group of facilities, the owner or operator may obtain a variance from Ecology.
 - (i) The request for a variance must be submitted to Ecology as part of the CEP Recycling Plan under WAC 173-900-XXX.
 - (ii) If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on Ecology's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities.
 - (iii) Ecology may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by Ecology to determine

- a level of financial responsibility other than that required by (2)(a) or (2)(b) of this subsection.
 - (iv) Any request for a variance for a processing facility will be treated as a significant recycling plan modification under WAC 173-900-XXX.
- (d) **Adjustments by Ecology.** If Ecology determines that the levels of financial responsibility required by (2)(a) or (2)(b) of this subsection are not consistent with the degree and duration of risk associated with the processor facility, Ecology may adjust the level of financial responsibility required under (2)(a) or (2)(b) of this subsection as may be necessary to protect human health and the environment.
 - (i) This adjusted level will be based on Ecology's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities.
 - (ii) An owner or operator must provide Ecology within a reasonable time <60 days?>, any information which Ecology requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustments of level or type of coverage for a facility will be treated as a CEP Recycling Plan update under WAC 173-900-XXX.
- (e) **Period of coverage.** An owner or operator must continuously provide liability coverage for a facility as required by this subsection until certifications of closure of the facility, as specified in WAC 173-900-XXX, Processor Closure, are received by Ecology.

Financial Assurance for Closure.

Note: Ecology is developing language for this standard.

Export.

- (1) General. All applicable requirements of the United States, as well as applicable requirements of importing and transit countries, apply.
- (2) Proper business records, such as manifests and other shipping documents are kept on file and are available on-site for inspection. (Kept for 5 years)
- (3) Hazardous Substances. Prior to export, the materials listed in (c) below must be removed and handled separately within the United States prior to shipment, unless:
 - (a) The export is for purposes of reuse or refurbishment, or
 - (b) The receiving facility documents the regular monitoring and control of these substances. If they are disposed as residual waste at the receiving facility, they must be handled in a manner at least as protective as those required in Federal Regulation
 - (c) Hazardous substances
 - i. Batteries;
 - ii. Mercury- and PCB-containing lamps and devices;
 - iii. Circuit boards from CEPs; and

- iv. CRTs and CRT glass, both of which are adequately processed for use as an industrial feedstock material prior to export.

(4) Reuse or Refurbishment. Prior to shipment, processors must evaluate all covered electronic products to assure that they can be reused or refurbished. They must be shipped to an entity in the importing country that has documented that they legitimately reuse or refurbish products.

Whole products shipped that have not been evaluated to assure that they can be reused or refurbished are shipped for recycling and must meet all requirements in this chapter for export.

Facility Compliance and Performance Audit.

- (1) The authority or authorized party will assure that an audit is performed by an independent and qualified third party approved by Ecology of all the processing facilities it uses to process CEPs.
- (2) An audit of each processing facility must be conducted on an annual basis to assure compliance with all requirements of this chapter.
- (3) The authority or authorized party is responsible for all costs associated with the audit.
- (4) The authority or authorized party must submit copies of the audits to Ecology as part of the annual report required in WAC 173-900- Annual Report.

Prison Labor.

No federal or state prison labor may be used to process covered electronic products. State prison inmates and individuals and local jail inmates from performing court ordered community service may refurbish covered electronic products for reuse within public facilities or by low-income individuals.

Training.

- (1) The processor must develop a training program to train staff in the processing standards for environmentally sound management identified in this chapter.
- (2) The training program must include information, at a minimum, on the following processing standards:
 - (a) The environmental risk management plan;
 - (b) The emergency management and safety plan;
 - (c) The hazardous materials identification and management plan
 - (d) The plan for reporting and responding to exceptional pollutant releases
 - (e) Tracking CEPs entering and exiting the facility;
 - (f) Other processing standards identified in this chapter.
- (2) For new employees, the employee must receive training within 120 days of being hired.
- (3) For existing employees:
 - (a) Initial training must be completed within 6 months of the effective date of this chapter or within 6 months of when processing activities begin for the first time.

- (b) Employees must participate in a review training session at least once every 3 years.

Access.

Processors must allow Ecology, designated Ecology representatives, or the authority or authorized party access to the facility to assess compliance with the requirements in this chapter and for conducting audits of the processing facility.

Authorization from the Law

RCW 70.95N.250

Processors to comply with performance standards for environmentally sound management — Rules. (Section 25)

1) The authority and each authorized party shall ensure that each processor used directly by the authority or the authorized party to fulfill the requirements of their respective standard plan or independent plan has provided the authority or the authorized party a written statement that the processor will comply with the requirements of this section and *section 26 of this act.

(2) Ecology shall establish by rule performance standards for environmentally sound management for processors directly used to fulfill the requirements of an independent plan or the standard plan. Performance standards may include financial assurance to ensure proper closure of facilities consistent with environmental standards.

(3) Ecology shall establish by rule guidelines regarding nonrecycled residual that may be properly disposed after covered electronic products have been processed.

(4) Ecology may audit processors that are utilized to fulfill the requirements of an independent plan or the standard plan.

(5) No plan or program required under this chapter may include the use of federal or state prison labor for processing.

Terms to Add to Definitions

"Processor" means an entity engaged in processing.

"Processing" means disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and prepare those materials for reclaiming or reuse in new products. Processing also means salvaging parts contained in electronic products to be used in new products.

Note: this is the current definition of processor in RCW 70.95N.

"Refurbishing" means to clean or repair a CEP in order to restore its functionality.

Primary processor means the first location where one of the following happens to the CEPs: dismantling, disassembling, or shredding.

WAC 173-900 – Recordkeeping:

All records required in this chapter must be kept on-site for 5 years. Upon request the records must be made available to Ecology for review.

Note: this section will be added to the rule with more details as additional rule language is developed.

WAC 173-900-640 Processor- Warnings, Violations and Penalties.

(1) It is a processor violation if a processor does not comply with the processor performance standards for environmentally sound management (WAC 173-900-400) in this chapter.

(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the processor for the first violation of WAC 173-900-400. The written warning will include a copy of the requirements to let the processor know what is needed for them to be in compliance.

(b) The processor must come into compliance immediately. If the compliance requirements in the written warning are not corrected within thirty days of receipt of the warning, Ecology will assess a penalty of up to:

- (i) One thousand dollars for the first violation; and
- (ii) Up to two thousand dollars for the second and each subsequent violation.
- (iii) Ecology will issue a penalty no more often than every thirty days for each violation.

(4) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.